IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 612 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMANBHAI ABHESINGH BARIA
Versus
STATE OF GUJARAT

Appearance:
MR VIJAY H PATEL for Appellant No. 1
THROUGH JAIL for Appellant No. 2
MR KG SHETH, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 23/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The appellants herein, having been convicted for the offences punishable under Sections 302 and 498(A) of the I.P.C. by Additional Sessions Judge, Panchmahals at Godhra in Sessions Case No.219 of 1993 by judgment and order dated 8th April, 1994, have preferred this appeal.

2. The facts of the present case in brief are that the appellants are, by relation, brother and sister. Appellant no.1 (original accused no.2) Laxmansinh was married to one Kapilaben and from the wedlock, Kapilaben had delivered a daughter. As per the prosecution case, the relationship between the appellant Laxman and his deceased wife Kapila was not happy and they had been having disputes. A Panchayat of the community was convened and a settlement was arrived at whereunder appellant Laxman had undertaken not to cause any harassment to his wife Kapila. However, because Bai Kapila was not educated and because appellant Laxmansinh was educated and was having a Government service, he did not like her and it is, therefore, alleged that appellant Laxmansinh with the help of his sister appellant Maniben administered poison to Bai Kapila while giving her the supper on 19th August, 1993. As a result of the poison, she started vomiting during the night. Next morning, she was taken to the hospital at Shahera and thereafter, to the Civil Hospital at Godhra. She ultimately met the unfortunate end of her life. During this period, police was informed and police recorded the complaint of Bai Kapila wherein she said that appellant Maniben had served her the supper and thereafter, she developed vomiting etc. On the basis of the complaint, an offence was registered and investigated. Having found sufficient evidence, the investigating agency filed chargesheet in the court of JMFC, Lunavada who, after following the procedure, committed the case to the Court of Sessions and Sessions Case No.219 of 1993 came to be registered.

3. The learned Additional Sessions Judge framed charges against the accused persons at Exh.2. The accused persons pleaded not guilty to the charges and claimed to be tried. At the end of the trial, the learned Additional Sessions Judge came to the conclusion that the prosecution, by its evidence, was successful in establishing the charges and, therefore, he convicted both the accused persons - appellants herein for the offences punishable under Sections 302 and 498(A) of the I.P.C. and sentenced them to undergo imprisonment for life for the offence of murder and no separate sentence for the offence punishable under Section 498(A) was given. Aggrieved by the said judgment and order, the

appellants preferred this appeal through jail.

4. It would be appropriate to record that another Criminal Appeal No.771 of 1994 also came to be preferred on behalf of the appellants. Since the present appeal was already registered and admitted, this court dismissed and disposed of that appeal by virtue of an order passed on December 12th, 1994.

5. Learned advocate Mr. V.H. Patel appearing for the appellants submitted that the appellants deserve to be acquitted outright even if the prosecution case is accepted as it is. Mr. Patel submitted that as per the prosecution case, the appellants caused the death of Bai Kapila by administering poison. Against this, there is positive evidence in the form of report of the Forensic Science Laboratory that the viscera collected at the time of post-mortem examination and sent for chemical analysis did not contain poison. Mr. Patel has also drawn attention to the evidence of Dr. Jayesh Bhavsar (Exh.39), who had performed the post-mortem, to the effect that the exact cause of death is not possible to be decided. The doctor has specifically deposed that he cannot say, for certain, that the death was caused due to poisoning. It is also stated by the doctor that dehydration can be caused by many factors and this may result into imbalance of electrolytes in the body which may be the cause of death. Mr. Patel submitted that in face of this, the learned Additional Sessions Judge could not have recorded conviction of the appellants. Mr. Patel submitted that the dying declaration in the form of complaint/F.I.R. assumes no importance because that is based only on a suspicion or surmise of the deceased linking her vomiting with her supper and with her strained relationship with her husband and sister-in-law. Mr. Patel submitted that previous disputes were resolved by intervention of the Panchayat of the community and there is nothing on record to satisfy the requirements of the offence punishable under Section 498(A) of the I.P.C.. He, therefore, urged that the appeal may be allowed.

6. The appeal is opposed to by learned Additional PP Mr. K.G. Sheth. He submitted that there is dying declaration before the police in the form of complaint and there is no reason to disbelieve that dying declaration. He has drawn attention of this court to the deposition of Pratapbhai Fatabhai Patelia (Exh.40) who happens to be the father of deceased Kapila and on arrival at the place, he was informed by Abhesinh, father of Laxmansinh that Kapila had vomited poison and that

poison was found from the house. Mr. Sheth, therefore, submitted that conviction has rightly been recorded and the appeal may be dismissed.

7. We have gone through the record and proceedings and we find that undue importance is attached to the dying declaration in the form of complaint and other impertinent factors. The conviction, in our opinion, could not have been recorded by the Trial Court for the reasons stated hereinbelow.

8. The appellants have been charged to have committed murder of deceased Kapila by administering poison. As per the prosecution case, poison was administered in the supper on 19th August, 1993 when appellant Maniben served the supper to Kapila. It is the case of the prosecution that in the night, Kapila developed physical problems and started vomiting. In the morning, on learning about the sickness, appellant Laxmansinh put a word to his father-in-law Pratapbhai Fatabhai Patelia at village Nandarva. When Pratapbhai came, he noticed his daughter in a bad state of health. His attention was drawn to the vomited substance lying on a quilt. He enquired as to what it was with Abhesinh, father of Laxmansinh and Abhesinh told him that it is poison and he asked as to wherefrom the poison came and he was informed by Abhesinh that it came from home. Kapila informed that she was given supper by her sister-in-law i.e. Maniben and, thereafter, she developed problems. Pratapbhai left his wife with Kapila and asked to preserve the quilt and went to his village Nandarva to call his kith and kin. They went to Khojalvas and took Kapila to the hospital at Shahera where she was examined by Dr. Pathak. Dr. Pathak said that it is not possible for him to render treatment and Kapila may be taken to Government Hospital. They took her back to Nandarva as it was a holiday, being Sunday. Next day, they went to Government Hospital at Shahera where she was admitted but her condition was worsening. Therefore, on advice, Kapila was taken to Civil Hospital at Godhra. The doctor started treatment but Kapila succumbed and expired soon.

9. The quilt containing the vomited substance was sent to the Forensic Science Laboratory for chemical analysis so also the viscera. The report of the Forensic Science Laboratory is at Exh.20 and it is opined that no poison of any nature was found either in the viscera or in the vomited substance.

10. With this background, if deposition of Dr. Raval

(Exh.28) is seen, he says that he was the Medical Officer at Shahera on 21st August, 1993. When Kapila was brought to him, she was in good state of health and as per the history given to him, she had consumed poison on August 19th, 1993. He found that her blood pressure, pulse, respiration and central nervous system were normal. She suddenly started having convulsions at 4.45 p.m. and a fall in blood pressure was also noted. Kapila was, therefore, referred to Civil Hospital, Godhra at 5.00 p.m. The doctor says that if poison is administered, there would be certain indications in the pupil, spleen, nervous system, orientation, consciousness etc. But no such indications were found in deceased Kapila when she was examined by him.

11. Dr. Nilesh Thakkar (Exh.36) was the Medical Officer at Civil Hospital, Godhra who said that Kapila was brought at Godhra on 21st August, 1993. When Kapila was brought to him, she was in coma. The case history was given to the effect that she had consumed rat-killing powder. During cross-examination, he stated that Kapila was in coma and was not in a position to speak. The history of having consumed rat-killing powder was given by a relative.

12. Dr. Jayesh Bhavsar (Exh.39) had performed the post-mortem. He said that at the time of performing post-mortem, he had collected viscera and had sent the same for chemical analysis to enable him to give the exact information as to the cause of death. In cross-examination, he says that even after considering the report of the Chemical Analyser, he cannot say, for certain, that Bai Kapila died of poisoning. He says that he cannot even say as to what was the exact cause of death. He has, however, given a certificate (Exh.23), after reviewing the report of the chemical analysis of the viscera of Kapilaben, that she may have died of cardio-vascular failure due to electrolyte imbalance. The doctor admits in cross-examination that imbalance in electrolyte may be caused due to diarrhoea and dehydration may be caused by many factors.

13. Thus, the expert evidence that is available on record does not specifically state the exact cause of death of Bai Kapila. There is a report of Chemical Analyser which negatives the possibility of her having been administered poison as the viscera or the vomited substance are found to be not containing poison of any kind. The charge levelled against the appellants of having committed murder of Kapila by administering poison, therefore, by no stretch of imagination, can be

said to have been proved on the basis of this evidence.

14. However, there are certain other factors which also need to be considered. There is evidence of Pratapbhai Fatabhai Patelia (Exh.40), father of deceased Kapila who says that deceased Kapila orally informed him that her sister-in-law appellant Maniben had given her food. He stated that he was informed by Abhesinh that deceased Kapila had vomited poison and that poison was taken from home only. However, the evidence regarding poison is proved to be false in light of the Forensic Science Laboratory report. It is also to be noted that Pratapbhai has made lot of improvement on material aspects in his deposition, as is revealed in the cross-examination.

15. Then what is left is the complaint given by Kapila before the police wherein she states that food was given to her by her sister-in-law appellant Maniben. She speaks of having vomited during the night and having seen poison in the vomited substance. She then states that in the morning, on being informed, Abhesinh asked her as to whether she would like her father Pratapbhai Fatabhai Patelia to be informed and on her saying so, Pratapbhai was informed. In reality, the story regarding poison is negatived by the Forensic Science Laboratory report. It would be appropriate to note that the whole prosecution case of the accused persons having administered poison is founded on this complaint. The complainant Kapila had a suspicion of she having been administered poison because she felt that she vomited poison because she was given poison in food. She had no other means to have an unbiased and dispassionate knowledge and because her relations were strained with the accused persons, she stated that fact in the complaint. If she had previous knowledge, she would not have consumed the supper. Therefore, her suspicion stated in the complaint cannot be accepted at face value without looking for some corroboration and in doing so, the court has to look to the Forensic Science Laboratory report and medical evidence. As discussed above, the Forensic Science Laboratory report positively negatives the presence of poison and the medical evidence is not certain about the cause of death. It would, therefore, be risky, in fact, impermissible to act on the dying declaration in the form of complaint and to record conviction for the two appellants. The appeal, therefore, deserves to be allowed so far as conviction of the appellants under Section 302 of the I.P.C. is concerned.

16. So far as conviction under Section 498(A) of the

I.P.C. is concerned, there is evidence on record to indicate that there were some disputes between the appellant Laxmansinh and deceased Kapila. It appears from the letters produced on record that appellant Laxmansinh had dissatisfaction about Kapila being uneducated and some quarrels may have taken place. However, those disputes were resolved with the help of community Panchayat and a deed to that effect was executed. There is no material on record to indicate that after the deed was executed, the appellants continued to ill-treat or harass the deceased. There is still no material to indicate the ingredients of Section 498(A) of the I.P.C. namely that the appellants subjected Kapila to cruelty, as defined under the said Section. In our opinion, therefore, the conviction under Section 498(A) of the I.P.C. also could not have been recorded.

17. For the reasons stated hereinabove, in our opinion, the appeal deserves to be allowed and the same is allowed. The judgment and order rendered by Additional Sessions Judge, Panchmahals at Godhra in Sessions Case No.219 of 1993 on 8th April, 1994, convicting the appellants Laxmansinh Abhesinh Baria and Maniben Abhesinh Baria for the offences punishable under Section 302 and 498(A) of the I.P.C., is hereby quashed and set aside. The appellants are acquitted of the charges levelled against them. The appellant no.1 Laxmansinh Abhesinh Baria be set at liberty forthwith, if not required in any other case. The appellant no.2 Maniben Abhesinh Baria's bail bond shall stand cancelled. Direct Service permitted.

(M.C. Patel, J.)

(A.L. Dave, J.)

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